

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

IN THE MATTER OF:

Complainant,

and

Respondent.

RECOMMENDED ORDER AND DECISION

Findings of Fact

1. On August 16, 2005, Complainant filed a Charge of Discrimination on her own behalf, alleging that she was the victim of handicap discrimination when Respondent initially placed her on an involuntary medical leave of absence and then terminated her due to a perception that she was mentally ill.

2. On April 20, 2007, the Department of Human Rights filed a Complaint with the Commission alleging on behalf of Complainant that she was the victim of handicap discrimination when Respondent terminated Complainant due to an erroneous belief that Complainant was suffering from severe depression with a suicidal potential.

3. On May 16, 2007, an Order was entered, which granted the motion by Complainant's counsel to withdraw as counsel on behalf of Complainant. The Order was sent to Complainant's last known address as supplied by Complainant's counsel.

4. On June 25, 2007, both Complainant, who appeared on her own behalf, and Respondent's counsel participated in a telephone conference call in which discovery deadlines were established. Moreover, the parties were directed at that time to appear at a telephone conference scheduled for October 9, 2007.

5. On October 9, 2007, an Order was entered, which noted that the Commission had been unable to reach Complainant by telephone since a recorded message indicated that Complainant's telephone number had been disconnected. Complainant was thereafter directed to supply the Commission with a new telephone number where she could be reached during business hours. The Order was sent to Complainant's last known address as supplied by Complainant's former counsel.

6. On October 16, 2007, Respondent filed a motion to compel Complainant to respond to certain discovery requests.

7. On October 16, 2007, Respondent filed a motion for issuance of a "HIPAA" order for the purpose of obtaining certain medical records.

8. On November 9, 2007, an Order was entered, which noted that Complainant had not provided the Commission with a telephone number where she could be reached and had not filed a response to Respondent's motions to compel and for issuance of a "HIPAA" order. The Order, which was sent to Complainant's last known address, gave Complainant one more chance to provide the Commission by November 19, 2007 with a telephone number where she could be reached during business hours so that she could participate in a telephone conference call that addressed the merits of Respondent's pending motions. The Order specifically stated that Complainant risked the entry of an Order recommending that the case be dismissed

with prejudice if she failed to provide the Commission with a telephone number where she could be reached during business hours.

9. Complainant has not complied with the Order of November 9, 2007 as of the date of the instant Order.

Conclusions of Law

1. A Complaint may be dismissed when a party engages in conduct that unreasonably delays or protracts proceedings. See, 56 Ill Admin Code Ch XI §5300.750(e).

2. The Complainant has unreasonably delayed proceedings by failing to comply with Commission directives to facilitate her participation in future telephone conference calls.

Discussion

Under the Commission's procedural rules, an administrative law judge may recommend to the Commission that a complaint be dismissed where a complainant engages in conduct that unreasonably delays or protracts proceedings. (See, 56 Ill Admin Code CH XI §5300.750(e).) On review, the Commission has upheld the use of such discretion to dismiss complaints in circumstances which are analogous to the case at bar. See, for example, *Ramirez and Wasco Spring Company*, 40 Ill HRC Rep 266 (1988), and *Hariford and Mitsubishi Motor Manufacturing of America*, IHRC, 10629, August 16, 2000.

Here, the circumstances also indicate that Complainant's inaction has served to unreasonably delay these proceedings. Specifically, Complainant has not provided a telephone number where she could be reached to participate in a telephone conference call, as required by the Order of November 9, 2007 and has not otherwise filed a response to two pending motions filed by Respondent. Complainant's failure to comply with the Order of November 9, 2007 and/or file written responses to pending motions by

the Respondent have resulted in an unreasonable delay in this case and renders it difficult for the Commission to take any action with regard to this case except to dismiss it. See, for example, *Foster and Old Republic General Services, Inc.*, IHRC, 5011, November 8, 1993.

Recommendation

Accordingly, I recommend that the Complaint and the underlying Charge of Discrimination of Kendra Fabish be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 9TH DAY OF APRIL, 2009